

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 18-21, 23-25, 27-36, 38, 39, and 42-49 are presently pending in the present application. Claims 18, 24, 25, 33, 38, 39, and 40 have been amended by way of the present Amendment. Claims 1-17, 22, 26, 37, 40, and 41 have been canceled without prejudice or disclaimer. No new matter is introduced by this amendment.

The Office Action rejected claims 33 and 40 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter; claims 18, 20, 23-27, 29-33, 35, 38-42, and 44-49 under 35 U.S.C. §103(a) as being unpatentable over *Engstrom* (U.S. Patent No. 7,065,333) in view of *Dahlin et al.* (U.S. Patent No. 6,122,263); claims 19, 21, 34 and 36 under 35 U.S.C. §103(a) as being unpatentable over *Engstrom* in view of *Dahlin et al.* and *Na et al.* (U.S. Patent 7,031,746); and claims 28 and 43 under 35 U.S.C. §103(a) as being unpatentable over *Engstrom* in view of *Dahlin et al.* and *Wakamatsu* (U.S. Pub. No. 2001/0029196).

With respect to the rejection of claims 33 and 40 under 35 U.S.C. §112, second paragraph, the Applicants respectfully request the withdrawal of the rejection. Claim 33 has been amended to change “outputting” to “output” as suggested in the Office Action, and claim 40 has been canceled without prejudice or disclaimer. Accordingly, the Applicants respectfully request the withdrawal of the rejection of claims 33 and 40 under 35 U.S.C. § 112, second paragraph.

Regarding the rejections of the claims under 35 U.S.C. §103(a), the Applicants respectfully traverse and request the withdrawal of the obviousness rejections for the reasons set forth below.

MPEP §2141 notes that the Patent Office bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. MPEP §2142 further notes that “[t]o reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”

The Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness for the claims as they are set forth herein, since there is no evidentiary support for the conclusion that the features recited in the claims were known at the time of the present invention. Accordingly, the Applicants request that such evidentiary support be placed on the record, or the obviousness rejections withdrawn.

Independent claim 18 recites, among other features, proceeding in a first resource saving mode by continuing to receive data from the broadcast network but not processing and not outputting said received data; and **proceeding in a second resource saving mode in which no data is received from the broadcast network, after operating in the first resource saving mode for a first predetermined time period, wherein, after operating in said second resource saving mode for a second predetermined time period, an application for**

outputting the processed data is deactivated. Independent claim 33 recites, among other features, at least one processor arranged to process the received data and to cause output of the processed data; ... in response to an interruption the data receiving device being arranged to operate in a first resource saving mode in which the receiver remains active but received data is not processed by the processor and not output, and **the data receiving device being arranged to operate in a second resource saving mode in which the receiver is deactivated, after operating in the first resource saving mode for a first predetermined time period, and the data receiving device being configured to, after operating in said second resource saving mode for a second predetermined time period, deactivate an application configured to output the processed data.** The Applicants submit that the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the above limitations of independent claims 18 and 33.

The Office Action cites *Engstrom* for the teaching of all of the features recited in claims 18 and 33 with the following exceptions. First, the Office Action implicitly acknowledges that *Engstrom* fails to disclose **proceeding in a second resource saving mode in which no data is received from the broadcast network, after operating in the first resource saving mode for a first predetermined time period**, but rather cites *Dahlin et al.* for such a teaching. (See, e.g., pages 3-4 of the Office Action.) Also, while the Office Action asserts that *Engstrom* describes outputting data, the Office Action acknowledges that *Engstrom* does not explicitly recite wherein, **after operating in said second resource saving mode for a second predetermined time period, an application for outputting the processed data is deactivated**, but rather appears to cite a receiver/tuner section of *Dahlin et al.* for such a teaching. (See, e.g., discussion on pages 6-7 with respect to claim 26.)

As acknowledged in the Office Action, *Engstrom* does not disclose **proceeding in a second resource saving mode in which no data is received from the broadcast network, after operating in the first resource saving mode for a first predetermined time period.** Additionally, the Applicants submit that *Engstrom* does not disclose wherein, **after operating in said second resource saving mode for a second predetermined time period, an application for outputting the processed data is deactivated.** While *Engstrom* describes a mobile device that includes broadcast play applications (430) and programs (432), it does not disclose or even suggest the recited second resource saving mode, nor a deactivation of an application for outputting data, as claimed.

The Office Action notes that the claims do not require that the first time period and the fourth (now referred to as the second) time period are different in length, and thereby appears to suggest that such time periods can be considered to begin and end at the same time and thus that the timing out/turning off of the receiver/tuner section of *Dahlin et al.* would satisfy both of these time period limitations. The Applicants respectfully disagree. Regardless of the length of the time periods, the claims recite that **after operating in said second resource saving mode for a second predetermined time period,** an application for outputting the processed data is deactivated. Thus, the deactivation necessarily occurs at a point in time after operating in the second resource saving mode. **Therefore, since the Office Action cites the timing out/turning off of the receiver/tuner section of *Dahlin et al.* for the teaching of the second resource saving mode, no such deactivation can be said to occur in the teachings of *Dahlin et al.* after operating in the timing out/turning off mode for a second predetermined time period.** In other words, the receiver/tuner section of *Dahlin et al.* is not described as being shut off, and then after a predetermined time period thereafter deactivated, but rather shut off and

deactivation would be simultaneous. Thus, the Applicants submit that it is improper to cite the timing out/turning off of the receiver/tuner section of *Dahlin et al.* for both the second resource saving mode and the deactivation of the application for outputting processed data, as recited in claims 18 and 33.

Accordingly, the Applicants submit that the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the limitations recited in independent claims 18 and 33. Therefore, the Applicants respectfully request the withdrawal of the obviousness rejection of independent claims 18 and 33.

The dependent claims are considered allowable for the reasons advanced for independent claim from which they respectively depend. These claims are further considered allowable as they recite other features of the invention that are neither disclosed nor suggested by the applied references when those features are considered within the context of their respective independent claim.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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